

Remarks

Claims 20-25 are in this application. Claim 20 has been amended.

The Examiner rejected claims 20-25 under 35 USC 112, first paragraph. This rejection is respectfully traversed.

It is submitted that claims 20-25 are enabled and a written description to support these claims is provided. As stated on page 7 of the specification, 18 genospecies of *Acinetobacters* have been isolated from human skin. Given this number, one skilled in the art would be able to isolate the bioemulsifier and determine its stability.

Therefore, it is respectfully requested that these rejections be withdrawn.

The examiner states that the claims are obvious in view of Gutnik, Shabtai and Zosim in view of Pola Kaseo Kogyo. This is respectfully traversed.

In order to establish a *prima facie* case of obviousness The standard test used to establish *prima facie* obviousness is the test set out by the Supreme Court in *Graham v. John Deere* (383 US 1, 148 USPQ 459 (1966)). To determine whether a claim is *prima facie* obvious:

- 1) the scope and content of the prior art are to be determined;
- 2) the differences between the prior art and the claims at issue are to be ascertained; and
- 3) the level of ordinary skill in the pertinent art resolved.

In addition, according to MPEP 2141, citing *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n. 5 (Fed. Cir. 1986), when applying 35 USC 103, the following tenets of patent law must be adhered to:

- 1) the claimed invention must be considered as a whole;
- 2) the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; and
- 3) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.

Reasonable expectation of success is the standard with which obviousness is determined. *In re Merck & Co., Inc.*, 800 F.2d 109, 231 USPQ 375 (Fed. Cir. 1986).

The reason, suggestion or motivation to combine references may be found explicitly or implicitly. While the references need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability must be clear and particular. *Ruiz v. A.B. Chance Co.*, 57 USPQ2d 1161 (Fed. Cir. 2000).

Therefore, since the examiner has not established a prima facie case of obviousness it is respectfully requested that the rejection be withdrawn.

It is submitted that the present application is in condition for allowance and favorable consideration is respectfully requested.

Reg. No.: 33,778

Tel. No.: (212) 708-1935
26 West 61st Street


Janet Cord
(Type or print name of practitioner)
c/o Ladas & Parry LLP
26 West 61st Street
New York, NY 10023